

AN ACT

relating to licensing and inspection requirements of the Department of Family and Protective Services for certain facilities and homes providing child care; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 40.006, Human Resources Code, is amended to read as follows:

Sec. 40.006. APPLICATION OF OTHER LAWS. (a) The department is subject to Chapters 551, 2001, and 2002, Government Code.

(b) The department is not required to comply with Chapter 53, Occupations Code, in issuing a license or conducting a background check under Chapter 42 or 43.

SECTION 2. Section 42.002, Human Resources Code, is amended by amending Subdivisions (4), (7), (8), (17), and (19) and adding Subdivisions (20) and (21) to read as follows:

(4) "General residential operation [~~Child-care institution~~]" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(7) "Day-care center" means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven

1 or more [~~than 12~~] children under 14 years of age for less than 24  
2 hours a day, but at least two hours a day, three or more days a week.

3 (8) "Group day-care home" means a child-care facility  
4 that provides care at the residence of the director, owner, or  
5 operator of the child-care facility for seven or more [~~7 to 12~~]  
6 children under 14 years of age for less than 24 hours a day, but at  
7 least two hours a day, three or more days a week.

8 (17) "Regular care" means care that is provided at  
9 least:

10 (A) four hours a day, three or more days a week,  
11 for three or more [~~than nine~~] consecutive weeks; or

12 (B) four hours a day for 40 or more days in a  
13 period of 12 months.

14 (19) "Residential child-care facility" means a  
15 facility licensed or certified by the department that operates [~~to~~  
16 ~~provide assessment, care, training, education, custody, treatment,~~  
17 ~~or supervision for a child who is not related by blood, marriage, or~~  
18 ~~adoption to the owner or operator of the facility,]~~ for all of the  
19 24-hour day~~[, whether or not the facility is operated for profit or~~  
20 ~~charges for the services it offers].~~ The term includes general  
21 residential operations [~~child-care institutions~~], child-placing  
22 agencies, foster group homes, foster homes, agency foster group  
23 homes, and agency foster homes.

24 (20) "Before-school or after-school program" means a  
25 child-care facility that provides care before or after, or before  
26 and after, the customary school day and during school holidays, for  
27 at least two hours a day, three days a week, to children who attend

1 prekindergarten through grade six.

2 (21) "School-age program" means a child-care facility  
3 that provides supervision, along with recreation or skills  
4 instruction or training, and may provide transportation, before or  
5 after the customary school day, for at least two hours a day, three  
6 days a week, to children attending prekindergarten through grade  
7 six. A school-age program may also operate during school holidays,  
8 the summer period, or any other time when school is not in session.

9 SECTION 3. Subchapter A, Chapter 42, Human Resources Code,  
10 is amended by adding Section 42.003 to read as follows:

11 Sec. 42.003. REFERENCE TO CHILD-CARE INSTITUTION. A  
12 reference in law to a "child-care institution" means a general  
13 residential operation.

14 SECTION 4. The heading to Section 42.041, Human Resources  
15 Code, is amended to read as follows:

16 Sec. 42.041. REQUIRED LICENSE ~~[OR ACCREDITATION]~~.

17 SECTION 5. Subsections (b) and (c), Section 42.041, Human  
18 Resources Code, are amended to read as follows:

19 (b) This section does not apply to:

- 20 (1) a state-operated facility;
- 21 (2) an agency foster home or agency foster group home;
- 22 (3) a facility that is operated in connection with a  
23 shopping center, business, religious organization, or  
24 establishment where children are cared for during short periods  
25 while parents or persons responsible for the children are attending  
26 religious services, shopping, or engaging in other activities,  
27 including retreats or classes for religious instruction, on or near

1 the premises, that does not advertise as a child-care facility or  
2 day-care center, and that informs parents that it is not licensed by  
3 the state~~[, including but not limited to retreats or classes for~~  
4 ~~religious instruction];~~

5 (4) a school or class for religious instruction that  
6 does not last longer than two weeks and is conducted by a religious  
7 organization during the summer months;

8 (5) a youth camp licensed by the Department of State  
9 Health Services;

10 (6) a facility licensed, operated, certified, or  
11 registered by another state agency;

12 (7) ~~[subject to Subsection (b-1),]~~ an educational  
13 facility that is accredited by the Texas Education Agency, the  
14 Southern Association of Colleges and Schools, or an accreditation  
15 body that is a member of the Texas Private School Accreditation  
16 Commission and that operates primarily for educational purposes  
17 for prekindergarten ~~[in grades kindergarten]~~ and above, a  
18 before-school or ~~[an]~~ after-school program operated directly by an  
19 accredited educational facility, or a before-school or ~~[an]~~  
20 after-school program operated by another entity under contract with  
21 the educational facility, if the Texas Education Agency, the  
22 Southern Association of Colleges and Schools, or the other  
23 accreditation body, as applicable, has approved the curriculum  
24 content of the before-school or after-school program operated under  
25 the contract;

26 (8) an educational facility that operates solely for  
27 educational purposes for prekindergarten ~~[in grades kindergarten]~~

1 through at least grade two, that does not provide custodial care for  
2 more than one hour during the hours before or after the customary  
3 school day, and that is a member of an organization that  
4 promulgates, publishes, and requires compliance with health,  
5 safety, fire, and sanitation standards equal to standards required  
6 by state, municipal, and county codes;

7 (9) a kindergarten or preschool educational program  
8 that is operated as part of a public school or a private school  
9 accredited by the Texas Education Agency, that offers educational  
10 programs through grade six, and that does not provide custodial  
11 care during the hours before or after the customary school day;

12 (10) a family home, whether registered or listed;

13 (11) ~~[subject to Subsection (b-1),]~~ an educational  
14 facility that is integral to and inseparable from its sponsoring  
15 religious organization or an educational facility both of which do  
16 not provide custodial care for more than two hours maximum per day,  
17 and that offers an educational program ~~[programs for children age~~  
18 ~~four and above]~~ in one or more of the following: prekindergarten  
19 ~~[preschool, kindergarten]~~ through at least grade three, elementary  
20 grades, or secondary grades;

21 (12) an emergency shelter facility providing shelter  
22 to minor mothers who are the sole support of their natural children  
23 under Section 32.201, Family Code, unless the facility would  
24 otherwise require a license as a child-care facility under this  
25 section;

26 (13) a juvenile detention facility certified under  
27 Section 51.12, Family Code, a juvenile correctional facility

1 certified under Section 51.125, Family Code, a juvenile facility  
2 providing services solely for the Texas Youth Commission, or any  
3 other correctional facility for children operated or regulated by  
4 another state agency or by a political subdivision of the state;

5 (14) an elementary-age (ages 5-13) recreation program  
6 operated by a municipality provided the governing body of the  
7 municipality annually adopts standards of care by ordinance after a  
8 public hearing for such programs, that such standards are provided  
9 to the parents of each program participant, and that the ordinances  
10 shall include, at a minimum, staffing ratios, minimum staff  
11 qualifications, minimum facility, health, and safety standards,  
12 and mechanisms for monitoring and enforcing the adopted local  
13 standards; and further provided that parents be informed that the  
14 program is not licensed by the state and the program may not be  
15 advertised as a child-care facility;

16 (15) an annual youth camp held in a municipality with a  
17 population of more than 1.5 million that operates for not more than  
18 three months and that has been operated for at least 10 years by a  
19 nonprofit organization that provides care for the homeless; ~~or~~

20 (16) a food distribution program that:

21 (A) serves an evening meal to children two years  
22 of age or older; and

23 (B) is operated by a nonprofit food bank in a  
24 nonprofit, religious, or educational facility for not more than two  
25 hours a day on regular business days;

26 (17) a child-care facility that operates for less than  
27 three consecutive weeks and less than 40 days in a period of 12

1 months;

2 (18) a program:

3 (A) in which a child receives direct instruction  
4 in a single skill, talent, ability, expertise, or proficiency;

5 (B) that does not provide services or offerings  
6 that are not directly related to the single talent, ability,  
7 expertise, or proficiency;

8 (C) that does not advertise or otherwise  
9 represent that the program is a child-care facility, day-care  
10 center, or licensed before-school or after-school program or that  
11 the program offers child-care services;

12 (D) that informs the parent or guardian:

13 (i) that the program is not licensed by the  
14 state; and

15 (ii) about the physical risks a child may  
16 face while participating in the program; and

17 (E) that conducts background checks for all  
18 program employees and volunteers who work with children in the  
19 program using information that is obtained from the Department of  
20 Public Safety;

21 (19) an elementary-age (ages 5-13) recreation program  
22 that:

23 (A) adopts standards of care, including  
24 standards relating to staff ratios, staff training, health, and  
25 safety;

26 (B) provides a mechanism for monitoring and  
27 enforcing the standards and receiving complaints from parents of

1 enrolled children;

2 (C) does not advertise as or otherwise represent  
3 the program as a child-care facility, day-care center, or licensed  
4 before-school or after-school program or that the program offers  
5 child-care services;

6 (D) informs parents that the program is not  
7 licensed by the state;

8 (E) is organized as a nonprofit organization or  
9 is located on the premises of a participant's residence;

10 (F) does not accept any remuneration other than a  
11 nominal annual membership fee;

12 (G) does not solicit donations as compensation or  
13 payment for any good or service provided as part of the program; and

14 (H) conducts background checks for all program  
15 employees and volunteers who work with children in the program  
16 using information that is obtained from the Department of Public  
17 Safety;

18 (20) a living arrangement in a caretaker's home  
19 involving one or more children or a sibling group, excluding  
20 children who are related to the caretaker, in which the caretaker:

21 (A) had a prior relationship with the child or  
22 sibling group or other family members of the child or sibling group;

23 (B) does not care for more than one unrelated  
24 child or sibling group;

25 (C) does not receive compensation or solicit  
26 donations for the care of the child or sibling group; and

27 (D) has a written agreement with the parent to

1 care for the child or sibling group;

2 (21) a living arrangement in a caretaker's home  
3 involving one or more children or a sibling group, excluding  
4 children who are related to the caretaker, in which:

5 (A) the department is the managing conservator of  
6 the child or sibling group;

7 (B) the department placed the child or sibling  
8 group in the caretaker's home; and

9 (C) the caretaker had a long-standing and  
10 significant relationship with the child or sibling group before the  
11 child or sibling group was placed with the caretaker; or

12 (22) a living arrangement in a caretaker's home  
13 involving one or more children or a sibling group, excluding  
14 children who are related to the caretaker, in which the child is in  
15 the United States on a time-limited visa under the sponsorship of  
16 the caretaker or of a sponsoring organization.

17 (c) A single license that lists addresses and the  
18 appropriate facilities may be issued to a general residential  
19 operation [~~child-care institution~~] that operates noncontiguous  
20 facilities that are across the street from, in the same city block  
21 as, or on the same property as one another and that are demonstrably  
22 a single operation as indicated by patterns of staffing, finance,  
23 administrative supervision, and programs.

24 SECTION 6. Section 42.042, Human Resources Code, is amended  
25 by amending Subsections (f), (g), and (i) and adding Subsections  
26 (g-1) and (g-2) to read as follows:

27 (f) In promulgating minimum standards for the provision of

1 child-care services, the department shall recognize the various  
2 categories of services, including services for specialized care,  
3 the various categories of children and their particular needs, and  
4 the differences in the organization and operation of child-care  
5 facilities and general residential operations [~~institutions~~].  
6 Standards for general residential operations [~~child-care~~  
7 ~~institutions~~] must require an intake study before a child is placed  
8 in an operation [~~institution~~]. The intake study may be conducted at  
9 a community mental health and mental retardation center.

10 (g) In promulgating minimum standards the department may  
11 recognize and treat differently the types of services provided by  
12 the following:

- 13 (1) registered family homes;
- 14 (2) child-care facilities, including general  
15 residential operations [~~child-care institutions~~], foster group  
16 homes, foster homes, group day-care homes, and day-care centers;
- 17 (3) child-placing agencies;
- 18 (4) agency foster homes; [~~and~~]
- 19 (5) agency foster group homes;
- 20 (6) before-school or after-school programs; and
- 21 (7) school-age programs.

22 (g-1) In determining and enforcing minimum standards for a  
23 school-age program, the department shall consider commonly  
24 accepted training methods for the development of a skill, talent,  
25 ability, expertise, or proficiency that are implemented with the  
26 consent of the parent or guardian of the participant and that are  
27 fundamental to the core purpose of the program.

1       (g-2) The executive commissioner shall adopt specific rules  
2 and minimum standards, including standards relating to background  
3 check information, for a child-care facility that is located in a  
4 temporary shelter, including a family violence shelter or homeless  
5 shelter, in which an adult, accompanied by a child related to the  
6 adult or a child for whom the adult is the managing conservator, may  
7 temporarily reside and that provides care for less than 24 hours a  
8 day for a child accompanying an adult temporarily residing in the  
9 shelter while the adult is not present at the shelter. In adopting  
10 the rules and minimum standards under this subsection, the  
11 executive commissioner shall:

12               (1) consider the special circumstances and needs of  
13 families that seek temporary shelter;

14               (2) consider the role of the shelter in assisting and  
15 supporting families in crisis; and

16               (3) distinguish between a child-care facility that  
17 provides care only for children temporarily residing in the shelter  
18 and a child-care facility that also provides care for children who  
19 are not temporarily residing in the shelter.

20               (i) Before adopting minimum standards, the department  
21 shall:

22               (1) convene a temporary work group to advise the  
23 department regarding the proposed standards, composed of at least  
24 six members who represent the diverse geographic regions of this  
25 state, including:

26                       (A) a department official designated by the  
27 commissioner to facilitate the work group's activities;

1           (B) a person with demonstrated expertise or  
2 knowledge regarding the different types and classifications of  
3 child-care facilities, homes, agencies, or programs that will be  
4 covered by the proposed standards;

5           (C) a parent with experience related to one of  
6 the different types or classifications of child-care facilities,  
7 homes, agencies, or programs that will be covered by the proposed  
8 standards; and

9           (D) a representative of a nonprofit entity  
10 licensed under this chapter; and

11           (2) [present the proposed standards to the State  
12 Advisory Committee on Child-Care Facilities for review and comment,  
13 and shall] send a copy of the proposed standards to each licensee  
14 covered by the proposed standards at least 60 days before the  
15 standards take effect to provide the licensee an opportunity to  
16 review and to send written suggestions to [~~the committee and~~] the  
17 department.

18           SECTION 7. Section 42.0422, Human Resources Code, is  
19 amended to read as follows:

20           Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing  
21 services to a resident of a general residential operation  
22 [~~child-care institution~~], including a state-operated facility that  
23 is a residential treatment center or a general residential  
24 operation [~~child-care institution~~] serving children with mental  
25 retardation, shall comply with Chapter 322, Health and Safety Code,  
26 and the rules adopted under that chapter.

27           SECTION 8. Subsection (b), Section 42.044, Human Resources

1 Code, is amended to read as follows:

2 (b) The department shall inspect all licensed or certified  
3 facilities at least once a year and may inspect other facilities or  
4 registered family homes as necessary. The department shall  
5 investigate a listed family home when the department receives a  
6 complaint of abuse or neglect of a child, as defined by Section  
7 261.401 [~~261.001~~], Family Code. At least one of the annual visits  
8 must be unannounced and all may be unannounced.

9 SECTION 9. Subchapter C, Chapter 42, Human Resources Code,  
10 is amended by adding Section 42.04412 to read as follows:

11 Sec. 42.04412. INTERFERENCE WITH INSPECTION; COURT ORDER.

12 (a) A person may not interfere with an investigation or inspection  
13 of a facility or family home conducted by the department under this  
14 chapter.

15 (b) During an investigation or inspection of a facility or  
16 family home under this chapter, the facility or family home shall  
17 cooperate with the department and allow the department to:

18 (1) access the records of the facility or family home;

19 (2) access any part of the premises of the facility or  
20 family home; and

21 (3) interview any child, employee, or other person who  
22 is present at the facility or family home and who may have  
23 information relevant to the investigation or inspection.

24 (c) If access to the records or premises of the facility or  
25 family home cannot be obtained, a district court in Travis County or  
26 in the county in which the facility or family home is located, for  
27 good cause shown and without prior notice or a hearing, shall issue

1 an order granting the department access to the records or premises  
2 in order to conduct the inspection, investigation, or interview.

3 (d) To assist the department in investigating whether a  
4 person is operating a facility or family home without a required  
5 license, certification, registration, or listing, a district court  
6 in Travis County or in the county in which the suspected facility or  
7 family home is located may, for good cause shown and without prior  
8 notice or a hearing, issue an order allowing the department to enter  
9 the suspected facility or family home at a time when the  
10 department's evidence shows that the suspected facility or family  
11 home may be providing child care subject to regulation under this  
12 chapter.

13 SECTION 10. Subsection (a), Section 42.0461, Human  
14 Resources Code, is amended to read as follows:

15 (a) Before the department may issue a license or certificate  
16 [~~to operate under Subchapter E~~] for the operation or the expansion  
17 of the capacity of a foster group home or foster family home that is  
18 located in a county with a population of less than 300,000 and that  
19 provides child care for 24 hours a day at a location other than the  
20 actual residence of a child's primary caretaker or of a general  
21 residential operation [~~child care institution~~], the applicant for  
22 the license, certificate, or expansion shall, at the applicant's  
23 expense:

24 (1) conduct a public hearing on the application in  
25 accordance with department rules after notifying the department of  
26 the date, time, and location of the hearing; and

27 (2) publish notice of the application in a newspaper

1 of general circulation in the community in which the child-care  
2 services are proposed to be provided.

3 SECTION 11. Section 42.056, Human Resources Code, is  
4 amended by amending Subsections (a), (a-2), (b), (b-1), (c), (f),  
5 (g), (h), (i), and (j) and adding Subsections (a-3), (a-4), and  
6 (a-5) to read as follows:

7 (a) In accordance with rules adopted by the executive  
8 commissioner [~~department~~], the director, owner, or operator of a  
9 child-care facility, child-placing agency, or family home shall,  
10 when applying to operate a child-care facility or child-placing  
11 agency or when listing or registering a family home and at least  
12 once during each 24 months after receiving a license, listing,  
13 registration, or certification of approval, submit to the  
14 department for use in conducting background and criminal history  
15 checks the name of:

16 (1) [~~the name of~~] the director, owner, and operator of  
17 the facility, agency, or home;

18 (2) [~~, and the name of~~] each person employed at the  
19 facility, agency, or home;

20 (3) each prospective employee of the facility, agency,  
21 or home;

22 (4) each current or prospective foster parent  
23 providing foster care through a child-placing agency;

24 (5) each prospective adoptive parent seeking to adopt  
25 through a child-placing agency;

26 (6) each person at least 14 years of age, other than a  
27 client in care, who:

1           (A) is counted in child-to-caregiver ratios in  
2 accordance with the minimum standards of the department;

3           (B) will reside in a prospective adoptive home if  
4 the adoption is through a child-placing agency;

5           (C) has unsupervised access to children in care  
6 at the facility or family home; or

7           (D) resides in the facility or family home; or  
8 [and]

9           (7) [(2) — the name of] each person 14 years of age or  
10 older, other than a client in care, who will regularly or frequently  
11 be staying or working at a [the] facility, family [or] home, or  
12 prospective adoptive home, while children are being provided care.

13           (a-2) In accordance with rules adopted by the executive  
14 commissioner, the director, owner, or operator of a day-care center  
15 shall submit a complete set of fingerprints of each person whose  
16 name is required to be submitted by the director, owner, or operator  
17 under Subsection (a), unless the person is only required to have the  
18 person's name submitted based on criteria specified by Subsection  
19 (a)(7).

20           (a-3) In accordance with rules adopted by the executive  
21 commissioner, the director, owner, or operator of a child-placing  
22 agency, foster home, or foster group home must, before a child for  
23 whom the department is the managing conservator is placed with the  
24 agency or in the home, submit a complete set of fingerprints of the  
25 following persons:

26           (1) a person who applies to be a foster or adoptive  
27 parent, including a person who has previously adopted a child

1 unless the person is also verified as a foster or adoptive home; and

2 (2) a person who is 18 years of age or older and who  
3 lives in the home of a person who applies to be a foster or adoptive  
4 parent.

5 (a-4) In accordance with rules adopted by the executive  
6 commissioner, the director, owner, or operator of a child-care  
7 facility or family home shall submit a complete set of fingerprints  
8 of each person whose name is required to be submitted by the  
9 director, owner, or operator under Subsection (a) if:

10 (1) the person resided in another state during the  
11 five years preceding the date the person's name was required to be  
12 submitted under Subsection (a); or

13 (2) the director, owner, or operator has reason to  
14 suspect that the person has a criminal history in another state.

15 (a-5) The rules adopted by the executive commissioner under  
16 Subsections (a-2), (a-3), and (a-4):

17 (1) must require that the fingerprints be submitted in  
18 a form and of a quality acceptable to the Department of Public  
19 Safety and the Federal Bureau of Investigation for conducting a  
20 criminal history check; ~~and~~

21 (2) may require that the fingerprints be submitted  
22 electronically through an applicant fingerprinting service center;  
23 and

24 (3) may allow the department to waive the submission  
25 of fingerprints required by this section if:

26 (A) the person for whom the submission is  
27 required has:

1                   (i) a fingerprint-based criminal history  
2 record check on file with the department; or

3                   (ii) a fingerprint-based criminal history  
4 clearinghouse record, as provided by Section 411.0845, Government  
5 Code, that is accessible to the department through the Department  
6 of Public Safety; and

7                   (B) the date on which the current submission of  
8 fingerprints is required occurs before the second anniversary of a  
9 previous name-based criminal history check of the person.

10           (b) The department shall conduct background and criminal  
11 history checks using:

12                   (1) the information provided under Subsection  
13 [Subsections] (a) [and (a-1)];

14                   (2) the information made available by the Department  
15 of Public Safety under Section 411.114, Government Code, or by the  
16 Federal Bureau of Investigation or other criminal justice agency  
17 under Section 411.087, Government Code; and

18                   (3) the department's records of reported abuse and  
19 neglect.

20           (b-1) In addition to any other background or criminal  
21 history check conducted under Subsection (b), for each person whose  
22 fingerprints are [name is] submitted [by the director, owner, or  
23 operator of a day-care center] under Subsection (a-2), (a-3), or  
24 (a-4) [Subsection (a)], the department shall conduct a state and  
25 Federal Bureau of Investigation criminal history check by:

26                   (1) submitting the person's fingerprints [provided  
27 under Subsection (a-2)], or causing the fingerprints to be

1 submitted electronically [~~as authorized by that subsection~~], to the  
2 Department of Public Safety for the purpose of conducting a state  
3 and federal criminal history check; and

4 (2) using the resulting information made available by  
5 that department under Section 411.114, Government Code, and by the  
6 Federal Bureau of Investigation and any other criminal justice  
7 agency under Section 411.087, Government Code.

8 (c) The department by rule shall require a child-care  
9 facility, child-placing agency, or registered family home to pay to  
10 the department a fee in an amount not to exceed the administrative  
11 costs the department incurs in conducting a background and criminal  
12 history check under this section.

13 (f) As part of a background check under this section, the  
14 department shall provide any relevant information available in the  
15 department's records regarding a person's previous employment in a  
16 [~~residential child-care~~] facility or family home to the person  
17 submitting the request.

18 (g) Except as otherwise provided by this subsection, a  
19 person whose name is submitted [~~by the director, owner, or operator~~  
20 ~~of a day-care center~~] under Subsection (a) may not provide direct  
21 care or have direct access to a child in a facility or family home  
22 [~~day-care center~~] before the person's background and criminal  
23 history checks under Subsections (b) and (b-1) are completed. A  
24 person may be employed at a facility or family home [~~day-care~~  
25 ~~center~~] and may provide direct care or have direct access to a child  
26 in the facility or family home [~~day-care center~~] before the  
27 person's criminal history check under Subsection (b-1) is completed

1 if:

2 (1) the facility or family home is experiencing a  
3 staff shortage;

4 (2) the state criminal history check and the  
5 background check using the department's records of reported abuse  
6 and neglect have been completed under Subsection (b), and the  
7 resulting information does not preclude the person from being  
8 present at the facility or family home [~~day-care center~~]; and

9 (3) [~~(2)~~] the person's fingerprints are submitted as  
10 soon as possible, but not later than the 30th day after the earliest  
11 of the date on which the person first:

12 (A) provides direct care to a child;

13 (B) has direct access to a child; or

14 (C) is hired [~~day-care center is experiencing a~~  
15 ~~staffing shortage that, if the day-care center were not allowed to~~  
16 ~~employ the person until completion of the federal criminal history~~  
17 ~~check, would result in a staff-to-child ratio that violates the~~  
18 ~~department's minimum standards~~].

19 (h) If the results of a criminal history check under  
20 Subsection (b-1) for a person employed by a facility or family home  
21 [~~day-care center~~] during a staffing shortage as authorized by  
22 Subsection (g) preclude the person from being present at the  
23 facility or family home [~~day-care center~~], the director, owner, or  
24 operator of the facility or family home [~~day-care center~~] shall  
25 immediately terminate the person's employment.

26 (i) A director, owner, or operator of a facility or family  
27 home [~~day-care center~~] commits an offense if the director, owner,

1 or operator knowingly:

2 (1) fails to submit to the department information  
3 about a person as required by this section and department rules for  
4 use in conducting background and criminal history checks with  
5 respect to the person; and

6 (2) employs the person at the facility or family home  
7 [~~day-care center~~] or otherwise allows the person to regularly or  
8 frequently stay or work at the facility or family home [~~day-care~~  
9 ~~center~~] while children are being provided care.

10 (j) A director, owner, or operator of a facility or family  
11 home [~~day-care center~~] commits an offense if, after the date the  
12 director, owner, or operator receives notice from the department  
13 that, based on the results of a person's background or criminal  
14 history check, the person is precluded from being present at the  
15 facility or family home [~~day-care center~~], the director, owner, or  
16 operator knowingly:

17 (1) employs the person at the facility or family home  
18 [~~day-care center~~]; or

19 (2) otherwise allows the person to regularly or  
20 frequently stay or work at the facility or family home [~~day-care~~  
21 ~~center~~] while children are being provided care.

22 SECTION 12. Subsection (d), Section 42.063, Human Resources  
23 Code, is amended to read as follows:

24 (d) An employee or volunteer of a general residential  
25 operation [~~child-care institution~~], child-placing agency, foster  
26 home, or foster group home shall report any serious incident  
27 directly to the department if the incident involves a child under

1 the care of the operation [~~institution~~], agency, or home.

2 SECTION 13. Subsections (c) and (e), Section 42.072, Human  
3 Resources Code, are amended to read as follows:

4 (c) The department may not issue a license, listing,  
5 registration, or certification to a person whose license, listing,  
6 registration, or certification is revoked or whose application for  
7 a license, listing, registration, or certification is denied for a  
8 substantive reason under this chapter before[+]

9 [~~(1)~~] the fifth anniversary of the date on which the  
10 revocation takes effect by department or court order or the  
11 decision to deny the application is final[, ~~if the facility is a~~  
12 ~~residential child-care facility; or~~

13 [~~(2) the second anniversary of the date on which the~~  
14 ~~revocation takes effect by department or court order or the~~  
15 ~~decision to deny the application is final, if the facility is not a~~  
16 ~~residential child-care facility].~~

17 (e) A person may continue to operate a facility or family  
18 home during an appeal of a license, listing, or registration denial  
19 or revocation unless the operation of the facility or family home  
20 [~~revocation or denial is based on a violation which~~] poses a risk to  
21 the health or safety of children. The executive commissioner  
22 [~~department~~] shall by rule establish the criteria for determining  
23 whether the operation of a facility or family home poses  
24 [~~violations which pose~~] a risk to the health or safety of children.  
25 The department shall notify the facility or family home of the  
26 criteria the department used to determine that the operation of the  
27 facility or family home [~~violation which~~] poses a risk to health or

1 safety and that the facility or family home may not operate. A  
2 person who has been notified by the department that the facility or  
3 home may not operate under this section may seek injunctive relief  
4 from a district court in Travis County or in the county in which the  
5 facility or home is located to allow operation during the pendency  
6 of an appeal. The court may grant injunctive relief against the  
7 agency's action only if the court finds that the child-care  
8 operation does not pose a health or safety risk to children. A  
9 court granting injunctive relief under this subsection shall have  
10 no other jurisdiction over an appeal of final agency action unless  
11 conferred by Chapter 2001, Government Code.

12 SECTION 14. Subsection (c), Section 42.073, Human Resources  
13 Code, is amended to read as follows:

14 (c) An order is valid for 30 [~~10~~] days after the effective  
15 date of the order [~~, except that an order relating to a residential~~  
16 ~~child-care facility is valid for 30 days after the effective date of~~  
17 ~~the order~~].

18 SECTION 15. Subsection (a), Section 42.074, Human Resources  
19 Code, is amended to read as follows:

20 (a) The department may file suit in a district court in  
21 Travis County or in the county in which a facility or family home is  
22 located for assessment and recovery of a civil penalty under  
23 Section 42.075, for injunctive relief, including a temporary  
24 restraining order, or for both a civil penalty and injunctive  
25 relief when [~~When~~] it appears that a person:

26 (1) has violated, is violating, or is threatening to  
27 violate the licensing, certification, listing, or registration

1 requirements of this chapter or the department's licensing,  
2 certification, listing, or registration rules and standards; or  
3 (2) knowingly fails to meet or maintain an exemption  
4 authorized under Section 42.041 and engages in activities that  
5 require a license or registration~~[, the department may file a suit~~  
6 ~~in a district court in Travis County or in the county where the~~  
7 ~~facility or family home is located for assessment and recovery of~~  
8 ~~civil penalties under Section 42.075, for injunctive relief,~~  
9 ~~including a temporary restraining order, or for both injunctive~~  
10 ~~relief and civil penalties].~~

11 SECTION 16. Subsection (a), Section 42.075, Human Resources  
12 Code, is amended to read as follows:

13 (a) A person is subject to a civil penalty of not less than  
14 \$50 nor more than \$100 for each day of violation and for each act of  
15 violation if the person:

16 (1) threatens serious harm to a child in a facility or  
17 family home by violating a provision of this chapter or a department  
18 rule or standard;

19 (2) violates a provision of this chapter or a  
20 department rule or standard three or more times within a 12-month  
21 period; ~~or~~

22 (3) places a public advertisement for an unlicensed  
23 facility or an unlisted or unregistered family home;

24 (4) knowingly fails to meet or maintain any criterion  
25 of an exemption authorized under Section 42.041 and engages in  
26 activities that require a license or registration; or

27 (5) fails to inform the department of a change in

1 status and the person knows the change in status requires the person  
2 to be licensed or registered under this chapter.

3 SECTION 17. Section 42.077, Human Resources Code, is  
4 amended by amending Subsection (a) and adding Subsection (a-1) to  
5 read as follows:

6 (a) If the department revokes or suspends a facility's  
7 license or a family home's listing or registration, the department  
8 shall publish notice of this action:

9 (1) in a newspaper of general circulation in the  
10 county in which the facility or family home is located; or

11 (2) on the department's Internet website along with  
12 other information regarding child-care services.

13 (a-1) If notice is published in a newspaper under Subsection  
14 (a), the [The] newspaper shall place the notice in the section in  
15 which advertisements for day-care services are normally published.

16 SECTION 18. Subsection (b), Section 261.401, Family Code,  
17 is amended to read as follows:

18 (b) A state agency that operates, licenses, certifies, [~~or~~]  
19 registers, or lists a facility in which children are located or  
20 provides oversight of a program that serves children shall make a  
21 prompt, thorough investigation of a report that a child has been or  
22 may be abused, neglected, or exploited in the facility or program.  
23 The primary purpose of the investigation shall be the protection of  
24 the child.

25 SECTION 19. The following provisions of the Human Resources  
26 Code are repealed:

27 (1) Subsection (b-1), Section 42.041;

1           (2) Subsection (c), Section 42.0431; and

2           (3) Subsections (a-1), (d), and (e), Section 42.056.

3           SECTION 20. The changes in law made by this Act to  
4 Subsections (i) and (j), Section 42.056, Human Resources Code,  
5 apply only to an offense committed on or after the effective date of  
6 this Act. An offense committed before the effective date of this  
7 Act is governed by the law in effect when the offense was committed,  
8 and the former law is continued in effect for that purpose. For the  
9 purposes of this section, an offense was committed before the  
10 effective date of this Act if any element of the offense occurred  
11 before that date.

12           SECTION 21. (a) The change in law made by this Act to  
13 Subsection (c), Section 42.072, Human Resources Code, applies only  
14 to the issuance of a license, listing, registration, or  
15 certification to a person whose license, listing, registration, or  
16 certification is revoked or whose application for a license,  
17 listing, registration, or certification is denied for a substantive  
18 reason on or after the effective date of this Act. The issuance of a  
19 license, listing, registration, or certification to a person whose  
20 license, listing, registration, or certification was revoked or  
21 whose application for a license, listing, registration, or  
22 certification was denied for a substantive reason before the  
23 effective date of this Act is governed by the law in effect when the  
24 license, listing, registration, or certification was revoked or the  
25 application was denied for a substantive reason, and the former law  
26 is continued in effect for that purpose.

27           (b) Sections 42.074 and 42.075, Human Resources Code, as

1 amended by this Act, apply only to conduct that occurs on or after  
2 the effective date of this Act. Conduct that occurs before the  
3 effective date of this Act is governed by the law in effect  
4 immediately before that date, and that law is continued in effect  
5 for that purpose.

6 SECTION 22. (a) The change in law made by this Act by which  
7 a school-age program is required to be licensed under Chapter 42,  
8 Human Resources Code, as amended by this Act, takes effect on the  
9 later of:

10 (1) the date on which the Department of Family and  
11 Protective Services adopts minimum standards for school-age  
12 programs in accordance with Section 42.042, Human Resources Code,  
13 as amended by this Act; or

14 (2) September 1, 2010.

15 (b) The change in law made by this Act by which a  
16 before-school or after-school program is required to be licensed  
17 under Chapter 42, Human Resources Code, as amended by this Act,  
18 takes effect on the later of:

19 (1) the date on which the Department of Family and  
20 Protective Services adopts minimum standards for before-school or  
21 after-school programs in accordance with Section 42.042, Human  
22 Resources Code, as amended by this Act; or

23 (2) September 1, 2010.

24 (c) The Department of Family and Protective Services shall  
25 adopt minimum standards as provided by Section 42.042, Human  
26 Resources Code, as amended by this Act, as soon as practicable after  
27 the effective date of this Act, but not later than September 1,

1 2010.

2 (d) The change in law made by this Act by which a child-care  
3 facility located in a temporary shelter that provides care only for  
4 children temporarily residing in the shelter is required to be  
5 licensed under Chapter 42, Human Resources Code, as amended by this  
6 Act, takes effect on the later of:

7 (1) the date on which the executive commissioner of  
8 the Health and Human Services Commission adopts minimum standards  
9 for those child-care facilities under Subsection (g-2), Section  
10 42.042, Human Resources Code, as added by this Act; or

11 (2) September 1, 2010.

12 (e) The change in law made by this Act by which a child-care  
13 facility located in a temporary shelter that provides care for  
14 children temporarily residing in the shelter and other children is  
15 required to be licensed under Chapter 42, Human Resources Code, as  
16 amended by this Act, takes effect on the effective date of this Act.

17 (f) The executive commissioner of the Health and Human  
18 Services Commission shall adopt rules and minimum standards as  
19 required by Subsection (g-2), Section 42.042, Human Resources Code,  
20 as added by this Act, as soon as practicable after the effective  
21 date of this Act, but not later than September 1, 2010.

22 SECTION 23. Except as otherwise provided by this Act, this  
23 Act takes effect September 1, 2009.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 68 passed the Senate on April 2, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2009, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 68 passed the House, with amendments, on May 19, 2009, by the following vote: Yeas 143, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor